

**BARBERING AND COSMETOLOGY EXAMINING BOARD
MINUTES
OCTOBER 4, 2004**

PRESENT: Leon Lauer, Mary Blake, Lee Martinez, Jeannine Bush, Janice Boeck, Jeffrey Patterson

EXCUSED: E. Rod Gottfredsen

STAFF PRESENT: Jerry Lowrie, Bureau Director, Dennis Schuh, Legal Counsel, Pat Schenck, Program Assistant, Judy Mender, Credentialing, Dr. Barbara Showers and Darwin Tichenor, Exam Center, Division of Enforcement Staff

GUESTS: Avita Regan, Aviderm Skin Care; Lauri Thomas, Alexander Thomas School of Esthetology; Lyann Buena Franco, Skin Work Face and Nail Spa; Audry Sann and Mary Kiley, NCAW; Julie Brolin, Kristin Kowalewski, & Kelly Paulson, Cost Cutters; Bonnie Conklin, Stephanie Gauthier, Amanda Haupt, Ua Chang, Elizabeth Strey, Jessica Treuer and Natalie Rotar SCBC; Jan Studesville, Just Nails; Barb Schuler WI Tech College System Office; and Teri Wians, Electrology

CALL TO ORDER

Leon Lauer, Chair, called the meeting to order at 9:37 a.m. A quorum of six members was present.

AGENDA

MOTION: Janice Boeck moved, seconded by Mary Blake, to approve the agenda as published. Motion carried unanimously.

MINUTES OF AUGUST 2, 2004

MOTION: Mary Blake moved, seconded by Janice Boeck, to approve the minutes of August 2, 2004 as written. Motion carried unanimously.

MINUTES OF AUGUST 9, 2004

MOTION: Jeannie Bush moved, seconded by Janice Boeck, to approve the minutes of August 9, 2004 as written. Motion carried unanimously.

**ADMINISTRATIVE REPORT - JERRY LOWRIE, BUREAU DIRECTOR
BOARD ROSTER**

The Board made minor address changes.

2004 MEETING DATES

The next Board meeting is December 6, 2004.

2005 MEETING DATES

Mr. Lowrie informed the Board that the Department decreased the Board's 2005 meetings to four from the original six meetings in 2004. Mr. Lowrie will work with the Department to increase the meetings back to six for 2005, based on the number of issues the Board is working on.

TO-DO-LIST

Noted.

SUMMARY OF REPORTS ON PENDING COURT CASES, DISCIPLINARY CASES AND ADMINISTRATIVE RULES AND PRESS RELEASES

Noted.

TRAVEL

49th Annual Conference of the NIC, Richmond VA – Report – Janice Boeck

Ms. Boeck reported on the 49th Annual Conference of NIC, Richmond VA on August 28-30, 2004. Ms. Boeck distributed a conference summary of nine session topics and objectives of the sessions. General Sessions provided information in NIC, its beginning and future, election of NIC officers and took place over the three-day conference. Session topics included NIC Legislative Committee Report, NACCAS report on clock hour conversion, the future of skin care, permanent cosmetics and FDA approved devices, what is new in nail technology, inspection versus investigation, "Clear", and ethical decision making, relationship between OSHA and regulatory Board, and NIC testing.

The conference focus was on current issues, sharing of ideas, and problems and experiences in matters that effect the regulation of cosmetology nationwide.

DISCUSSION RESULTING FROM CONTINUING EDUCATION COMMITTEE

Mr. Lowrie reported on the Department's budget issues and the lack of resources the Department has in order to implement continuing education at this time. The Committee will continue to meet and discuss continuing education course options and issues relating to implementing continuing education in the event the Department's budget is such that the Department will have additional staff to approve providers and to monitor continuing education. The Department was considering contracting to another agency to complete this task. Due to the recent publicity regarding state agencies, contracting to outside agencies for jobs previously completed by state employees makes this not an option at this time.

Mr. Lauer urged the guests visiting the Board meeting to contact their legislatures regarding the Department's not moving forward on continuing education at this time due to the lack of staff and budget constraints.

LEGISLATIVE/ADMINISTRATIVE RULES-UPDATE AND DISCUSSION

Scope Statement – Waxing, Managers' Responsibilities and other Minor Changes – Information Only

Information only.

Scope Statement – Microdermabrasion and Chemical Peels – Information Only

The Board noted that Minnesota and Michigan is reversed under "Comparison with similar rules in adjacent states" Michigan has no regulations that address the provision of microdermabrasion.

Policy Analysis "and laser hair removal" is mentioned under policy analysis but nowhere else in the scope statement. Correct scope statement by deleting "and laser hair removal".

RL 4.01 Criminal Background Checks – Emergency Rule

Mr. Lowrie reported that the emergency rule is in response to federal public law which required authorization by state statute to continue the FBI's policy of honoring state requests for criminal background reports. The rule modifies the authority of the Department to conduct criminal background checks of applicants and requires rule making by the Department to conduct investigations whether an applicant for or holder of any credential issued by the Department has been charged with or convicted of a crime.

The emergency rule preserves the ability of the Department to continue its practice of conducting criminal background investigations of applicants and credential holders and eliminates the ability of the Department to exempt peace officers from the fingerprinting requirement for credentialing as a private detective or private security person.

As part of an investigation, the Department may require a credential holder to be photographed and fingerprinted. The Department may refer photographs and fingerprints so obtained to the Department of Justice for internal analysis or submission of the fingerprint cards to the Federal Bureau of Investigation for the purpose of verifying the identity of the persons fingerprinted and obtaining records of their criminal arrests and convictions.

Definition of Electrologists

Jeannie Bush questioned whether electrologists could use a Vascular 300. Mr. Schuh reported on the definition of electrologists and stated that allowing electrologists to use a Vascular 300 would require an administrative rule change since it is considered outside the scope of practice,. Based on our rules, since the Vascular 300 removes spider veins and not hair, electrologists cannot use the equipment.

Board Member Composition Change to Include Manicuring- 15.405 (17)

The Board discussed and agreed that adding a professional manicurist as a Board member would be beneficial to the Board based on the complaints the Department is receiving on manicurists. Adding a manicurist as a member of the Board will require a statute change to Ch 15.405(17) stats.

The Board will discuss this further at the December 2004 Board meeting.

Discrimination Rule Inclusion Discussion-BC 2.03

Mr. Lowrie discussed implementing a rule change to include discrimination issues. The Department is unable to use discrimination as an enforcement tool and must look at unprofessional conduct.

Angela Arrington, Attorney, DOE met with the Board and reported that complaints have been received involving discrimination based on a person's conviction record, racial discrimination, and disability. There is no code or statute provision within Barbering and Cosmetology that addresses discrimination behavior. There should be at least one provision that addresses the issue of discrimination. Adopting an anti-discrimination rule or statute furthers the Department's interest in protecting the public from discrimination by licensed professionals. Legal counsel will work with Ms. Arrington to draft language to address discrimination under BC 2.03.

MOTION: Lee Martinez moved, seconded by Jeannine Bush, to request legal counsel to draft language under BC 2.03 to address discrimination issues. Motion carried unanimously.

Autoclave Settings Discussion- BC 4.03

The Board noted that under BC 4.03, time, temperature, and pressure should be included. Add the word pressure.

MOTION: Jeannie Bush moved, seconded by Mary Blake, to request that legal counsel draft language to correct BC 4.03 to include pressure. Motion carried unanimously.

Adopting AEA Standards for Sterilization

Ms. Bush stated that the current statutes are vague, incomplete and do not protect the public. More definitions regarding infectious control could be included. Ms. Bush distributed information on infection control standards for the practice of electrology compiled by the American Electrology Association for the Board's review.

The Board will discuss this issue further at the December Board meeting.

RECIPROCITY ISSUES

Open-Book Examination for Reciprocity Candidates

A rule change would be required prior to the exam office compiling an open-book examination on statutes and rules for reciprocity candidates. A subcommittee will be required to create examination questions.

MOTION: Janice Boeck moved, seconded by Lee Martinez, to request that legal counsel draft a rule change implementing the open-book examination requirement for reciprocity candidates. Motion carried unanimously.

EXAMINATION AND EDUCATION

Schools Procedures on Evaluating Out-of-State Training – Judy Mender

Judy Mender reported on the procedures schools use to evaluate out-of-state training. The Board would like to see continuity so every school evaluates applicants the same. The Board could set the criteria for schools to use in evaluating applicants skills.

MOTION: Janice Boeck moved, seconded by Jeffrey Patterson, to form a sub-committee to put together criteria for schools to use in evaluating an applicants skills. Lee Martinez abstained. Motion carried.

Policy on Reviewing Applicants Training From Other Jurisdictions – Janice Boeck.

Janice Boeck distributed Gateway Technical College license by reciprocity policy for evaluating out-of-state training.

Applicant Requirements: The applicant must have a certificate of graduation and an official document from a Barber/Cosmetology school showing hours of attendance and time spent in hours of study. Applicant must also include quota requirements. Documents are compared with Wisconsin requirements.

Additional Requirements: When applicant holds a license in another jurisdiction, in which they took the examination. Applicant may or may not have acquired working hours in the job market. Documents, including hours, are compared with Wisconsin requirements.

Practical Testing: May be administered to an applicant whose skills may not meet the standards required to hold a Wisconsin license as some states do not require a practical test or do not cover the same areas of training that Wisconsin does.

Additional Requirement: Practical test shall include demonstrating competencies in the following areas: permanent waving, chemical relaxing, hair color application, women's uniform hair cut, men's taper cut and bow dry and iron.

Applicants must demonstrate the use of proper equipment in a safe and sanitary manner in all subject areas.

A written multiple-choice test may be given which covers all areas of Wisconsin State Testing. Applicants receive a Wisconsin Statutes and Administrative Code book. The cost of the evaluation is up to each school where the testing takes place.

Contract for Continental Testing – Barbara Showers

The Department will review all bids that come into the Department for testing. A Subcommittee will review all proposals prior to the Department signing a new contract.

Foreign Language Exams Discussion-Darwin Tichenor

Mr. Tichenor reported on a response to a question regarding foreign language exams discussed at the NIC conference held in August of 2004. Mr. Tichenor will draft a letter to NIC requesting a more detailed and thorough analysis on the pass/fail rates and translated exams for foreign language candidates for the Boards review.

PRACTICE ISSUES- LEGAL COUNSEL REVIEW

Inquiries Received by Legal Council – Dennis Schuh

Mr. Schuh reported on information received from the Wisconsin Department of Public Health regarding a problem with people getting infected from foot whirlpools that are being used for pedicures. The Board noted that people who shaved their legs should not get a pedicure on the same day. Serious infections that require medical treatment and create scarring may occur from foot whirlpools. The Board requested language on California's rule regarding whirlpool use for pedicures.

Mr. Schuh reported that the State of Minnesota is currently involved in an investigation of forged diplomas and transcripts.

Mr. Schuh requested the board's opinion regarding a question from an aesthetician on whether there are any regulations or prohibitions regarding the use of ultrasound when giving facials. The Board did not see a problem as long as it is less than three megahertz. Class one devices are allowed.

Board Policy Regarding Services in Unlicensed Establishments

Nursing Homes

The Board discussed unlicensed practice in nursing homes where a certified nursing assistant provided barbering/cosmetology services to residents in a separate area set aside for those activities. Such service fall under the exception "personal care services performed in correctional institutions, hospital and licensed nursing homes under the supervision of a person responsible for inmate or patient care" but only if the services are not paid for and the CNA is only paid his or her salary or hourly wage.

The Board discussed services outside of a licensed establishment and noted that licensees shall not provide personal care services outside of a licensed establishment except for persons who are unable to leave their homes because of illness or disability or for persons who are in hospitals, nursing homes, correctional institutions or other institutions. Licensees may provide any personal care service for inmates or patients regardless of whether it is done in a designated area or in the personal room of an inmate, patient, or infirm person within an institution or private home.

Volunteer Locations

If barbering and cosmetology service has an expectation of receiving money, service must be in a licensed establishment. If compensation is not an expectation, service does not have to be in a licensed establishment; however, the problem of protecting the consumer may be in question. The Board discussed setting a policy for volunteer services. Sanitation will not be an issue when making a house call, verses doing multiple cuts in a church basement. The Board discussed conducting multiple cuts in a setting outside of a licensed establishment and sanitation issues at length.

Practice Out Side of a Licensed Establishment

Setting standards and criteria for practices out-side of a licensed establishment may require a rule change. The Board discussed providing haircuts while volunteering time at a function, charging a fee for in-home visits, nursing home patients, and licensing an establishment on wheels. Judy Mender will work with Dennis Schuh to establish guidelines and draft language for a rule change for the December meeting.

The Subject of Bleach as a Disinfectant

The Board reviewed BC 1(6) definitions of disinfectant and noted that currently bleach is not a stable disinfectant due to the lack of its shelf life. It is OK as a surface disinfectant but not as a submersion disinfectant. New products are available for submersion but are expensive. The Board will discuss this further in December.

DIVISION OF ENFORCEMENT

BAC Citation Procedure – Eric Callisto and Greg Raube

Mr. Callisto and Mr. Raube met with the Board to discuss the new citation process used by the Division of Enforcement consumer protection investigators and the steps involved in the citation procedure. Citations will be served by hand delivery at the time of inspection or by mail following an inspection by a DOE consumer protection investigator. An Order to Correct may be issued simultaneously.

Mr. Raube reported on the steps involved when payment has been received, if no timely response is received, and whether a request for a hearing is received in a timely matter.

MOTION: Lee Martinez moved, seconded by Mary Blake, to allow DOE to implement the new citation procedure. Motion carried unanimously.

Forfeiture Grid

Mr. Raube distributed a forfeiture grid showing case number, name, violation, forfeiture amount, and the status of payment. This grid will go before the Board for a decision on closing cases sooner. Investigators will use their judgment on whether to issue a citation for a dollar amount or whether a case should require further investigation.

NATIONAL-INTERSTATE COUNCIL OF STATE BOARDS OF COSMETOLOGY, INC.

Cosmetology and Nail Technology Online Practice Tests

Informational Item only.

NEW BUSINESS

Avita Regan, LE, Aviderm Skin Care, invited the Board members to attend a seminar she is conducting on October 11, 2004 on advanced skin care equipment and treatment.

BOARD MEMBER ACTIVITY

The Board noted that Lee Martinez left the meeting to confer with a guest in the hallway for five minutes while the meeting was in session.

The Barber Shop Hotel Downtown Darlington – Laura Jenkins – Information Only

Information only.

PRESENTATION OF PROPOSED STIPULATIONS BY DIVISION OF ENFORCEMENT OR ANY THAT MAY BE SUBMITTED AFTER PRINTING OF THE AGENDA.

VISITORS COMMENTS

None.

CLOSED SESSION

MOTION: Janice Boeck moved, seconded by Jeannine Bush , to convene to Closed Session to deliberate on cases involving hearings (s. 19.85 (11) (a), Stats.); to consider licensure or discipline (s. 19.85(1) (b), Stats. to consider individual histories or disciplinary data (s. 19.85(1) (f), Stats.); and to confer with legal counsel (s. 19.85(1) (g), Stats.). Motion carried by roll call vote: Leon Lauer-yes, Jeannie Bush-yes, Janice Boeck-yes, Mary Blake-yes; Lee Martinez-yes; Jeffrey Patterson-yes.

Open session recessed at 12:55 p.m.

The Board deliberated on monitoring reports, proposed stipulations, administrative warnings, case closings, examination issues, request for appeal of denials, application review, and reinstatement requests and case status reports.

RECONVENE INTO OPEN SESSION

MOTION: Mary Clarke moved, seconded by Janice Boeck, to reconvene into open session at 1:55 pm a.m. Motion carried unanimously.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MONITORING REPORT

None.

CASE CLOSINGS

MOTION: Lee Martiniz moved, seconded by Janice Boeck, to close the following cases:

- 02 BAC 072 for insufficient evidence.
- 02 BAC 095 for no violation.
- 04 BAC 004 for no violation.
- 02 BAC 062 for no violation.
- 02 BAC 065 for insufficient evidence.
- 02 BAC 070 for insufficient evidence.
- 02 BAC 074 for prosecutorial discretion (P5).
- 02 BAC 077 for prosecutorial discretion (P2).
- 02 BAC 088 for lack of jurisdiction (L2).
- 02 BAC 106 for prosecutorial discretion (P5).
- 02 BAC 107 for prosecutorial discretion (P2).
- 02 BAC 108 for lack of jurisdiction (L2).
- 02 BAC 115 for prosecutorial discretion (P1).
- 02 BAC 116 for prosecutorial discretion (P1).
- 02 BAC 129 for insufficient evidence.
- 03 BAC 001 for prosecutorial discretion (P2).
- 03 BAC 009 for no violation.
- 03 BAC 010 for no violation.
- 03 BAC 024 for prosecutorial discretion (P2).
- 03 BAC 033 for prosecutorial discretion (P2).
- 03 BAC 040 for prosecutorial discretion (P2).
- 03 BAC 049 for prosecutorial discretion (P3).
- 03 BAC 052 for prosecutorial discretion (P2).
- 03 BAC 059 for prosecutorial discretion (P7).
- 03 BAC 060 for no violation.
- 03 BAC 069 for prosecutorial discretion (P7).
- 03 BAC 071 for insufficient evidence.
- 03 BAC 073 for insufficient evidence.

03 BAC 079 for prosecutorial discretion (P2).
04 BAC 022 for prosecutorial discretion (P2).
Motion carried unanimously.

STIPULATIONS

MOTION: Jeannie Bush moved, seconded by Mary Clarke, to accept all the Stipulations and as written in the matter concerning the Board. Motion carried unanimously.

HUU VAN NGUYEN AND HUDSON NAILS 03 BAC 109

MOTION: To adopt the Findings of Fact, Conclusions of Law, Order, and Stipulation in the matter concerning **Huu Van Nguyen and Hudson Nails 03 BAC 109**. Motion carried unanimously.

CYNDI'S ELECTROLYSIS 03 BAC 083

MOTION: To adopt the Findings of Fact, Conclusions of Law, Order, and Stipulation in the matter concerning **Cyndi's Electrolysis 03 BAC 083**. Motion carried unanimously.

SUSAN K. PAULSON d/b/a RAVIN MANES CO. 02 BAC 037

MOTION: To adopt the Findings of Fact, Conclusions of Law, Order, and Stipulation in the matter concerning **Susan K. Paulson d/b/a Ravin Manes & Co 02 BAC 037**. Motion carried unanimously.

PROPOSED DECISION

ANNA M. MAAS, ANN GEIGER ELECTROLYSIS, ANN GEIGER STUDIOS INC., LS0311132BAC

MOTION: Janice Boeck moved, seconded by Jeffrey Patterson, to adopt the Proposed Decision in the matter of disciplinary proceedings against **Anna M. Maas, Ann Geiger Electrolysis, Ann Geiger Studios Inc., LS0311132BAC**. Jeannie Bush excused herself from the meeting and abstained. Motion carried.

EXAMINATION ISSUES

Request for Modification of Examination Due to Disability

The Board reviewed a request, from an applicant with a disability. The applicant has requested a modification of the examination and a requested an extension of their temporary apprentice permit. The Board did not agree to modify the examination but agreed to extend the applicant's temporary apprenticeship permit.

The Board discussed requesting medical documentation on the applicant's ability to practice. During the extension on the applicants temporary apprentice permit the applicant must show proof that he is attempting to take and pass the examination. The Board requests that the applicant submit a record of his training in the six areas expected to be on the examination. The Board is concerned whether the applicant would be able to pass the practical examination after taking and eventually passing the written examination.

MOTION: Janice Boeck moved, seconded by Lee Martinez, to grant Kevin Neumann a one year extension of a temporary apprentice permit with the requirements that he turn in monthly apprentice report sheets to the Department that show he has pursued training in each of the six areas expected to be on the examination. In addition, request that he submit a Medical report concerning his ability to practice as a Barber under his current diagnosis, and that he further show steps of what he is doing to prepare him for the examination. Motion carried unanimously.

MOTION: Lee Martinez moved, seconded by Janice Boeck, not to modify the examination as written. Motion carried unanimously

APPLICATIONS

None.

REINSTATEMENT REQUEST

REESASUE LYNNE PIEPER

MOTION: Lee Martinez moved, seconded by Jeannie Bush, to deny Reesasue Lynne Pieper's request for reinstatement. Motion carried unanimously.

NEW BUSINESS

None.

OTHER ITEMS AS DEFINED BY LAW

None.

ADJOURNMENT

MOTION: Lee Martinez moved, seconded by Jeannie Bush to adjourn the meeting at 2:00 p.m. Motion carried unanimously.

NEXT MEETING: December 6, 2004